SUPREME COURT OF THE UNITED STATES.

No. 633.

THE COMMISSIONERS OF IMMIGRATION, APPELLANTS,

vs.

THE NORTH GERMAN LLOYD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 UNITED STATES OF AMERICA.

Circuit court of the United States for the fifth circuit and district of Louisiana.

THE NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } In equity. No. 7277.

Bill of complaint.—Filed October 23d, 1874.

To the judges of the circuit court of the United States for the district of Louisiana:

The North German Lloyd, a corporation created by the laws of Germany and having its principal place of business therein, brings this its bill against the Commissioners of Immigration, a corporation established by the laws of the State of Louisiana, composed of citizens of the said State of Louisiana, residing in the city of New Orleans, in the said State; and thereupon your orator complains and says:

That your orator is owner of a line of steamships plying and
2 engaged in the business of carrying freight and passengers between the said city of New Orleans and ports in France and Germany.

That an act of the State of Louisiana, approved June 13, 1874, enacts:

SECTION 2. That a bureau of immigration shall be, and is hereby, established in the city of New Orleans, for the purpose of supervising the landing of immigrants and the immigrant vessels arriving at the port of New Orleans, &c.

SECTION 3. That the bureau established by the second section of this act shall be under the charge of four commissioners, to be designated as the commissioners of immigration, who shall be appointed by the governor of the State, by and with the advice of the senate, for the term of two years. * * *

It shall be the duty of said commissioners to provide for the maintainance and support of such of the persons for whom commutation shall have been given as hereinafter provided, or on whose account bonds shal have been given, as would otherwise become a charge upon any city, town, or parish of this State, &c.

SECTION 4. That within twenty-four hours after the landing of
3 any passengers from any ship or vessel arriving at the port of New Orleans from any of the United States other than this State, or from any country out of the United States, the master or commander of the ship or vessel from which such passenger or passengers shall have been landed shall make a report in writing, on oath or affirmation, to the chief of the bureau of immigration, at his office in the city of New Orleans, which report shall state the name, place of birth, last legal residence, age, and occupation of every person or passenger who shall have landed from such ship or vessel, on her last voyage to said port, not being a citizen of the United States, and who shall have within the last twelve months arrived from any country out of the United States at any place within the United States, and who shall not have paid the commutation-money, or being bonded according to the provisions of this act; the same report shall contain a like statement of all such persons or passengers aforesaid as shall have been landed or suffered to land from any such ship or vessel at any place during such last voy-

age, or who shall have been put on board or suffered to go on board of any other ship or vessel or boat, with the intention of proceeding to and landing at the city of New Orleans, or elsewhere within the limits of the State. The said report shall further specify whether any of the said passengers, as reported, are lunatic, idiotic, deaf, dumb, blind, infirm, maimed, or above the age of sixty years; also designating all such passengers as shall be under the age of thirteen, or widows having families, or women without husbands having families, with the names and ages of their families; shall further specify particularly the names, last place of residence, and ages of all passengers who may have died during the said last voyage of said vessel. * * *

SECTION 5. That it shall be the duty of the commissioners of immigration or the chief of the bureau, by an indorsement to be made on said report, to require the owner or consignee of the ship or vessel from which such persons were landed to give a several bond to the people of the State, in a penalty of three hundred dollars, for any and every person or passenger included in said report, such bond being secured, as hereinafter provided and conditioned, to indemnify and save harmless the commissioners of immigration, and each and every city, town, or parish in this State, from any costs which said commissioners or such city, town, or parish shall incur for the relief or support of the person named in the bond within five years from the date of such bond, and also to indemnify or refund to the said commissioners any expense or charge they may necessarily incur for the support or medical care of the persons named therein. * * * *

It shall be lawful for any owner or consignee, at any time within twenty-four hours after the landing of such persons or passengers from any ship or vessel in the port of New Orleans, except as in the section herein provided, to commute for the bond or bonds so required, by paying to the commissioners of immigration, or their appointed agent, the sum of two dollars for each and every passenger reported by him as by law required; the receipt of said sum by said commissioners or agent shall be deemed a full and sufficient discharge from the requirements of giving bonds as above provided, but no owner or consignee shall be authorized to commute for the bond so required for any passenger arriving in the port of New Orleans who may have to be sent to the Charity Hospital on account of illness, or for any passenger who, on examination, shall be found either lunatic or idiotic, or dumb, blind, maimed, or infirm, or above the age of sixty years, or widow with a child or children, or any person unable to take care of himself or herself without becoming a public charge. * * *

And in case that any owner or consignee of any vessel arriving at the port of New Orleans shall fail, neglect, or refuse to give the bonds required by this act, or pay the commutation-money, as above set forth, within the time prescribed as aforesaid, said owners or consignees shall forfeit and pay unto the said commissioners of immigration the penalty of one hundred dollars in the case of each and every person or passenger for whom they shall fail, neglect, or refuse to give bond or pay the commutation-money as in this act set forth, which sum or sums may be sued for and recovered in any court of competent jurisdiction with judgment in solido against such owner or consignee.

Section 7 enacts that the moneys received by said commissioners for commutation or otherwise, not necessary for the maintainance of said business, shall be turned over to the treasurer of the Charity Hospital, at the city of New Orleans, to be used for the sole benefit of the said Charity Hospital.

Your orator further alleges that said statute, so far as it requires the said bonds or payment of said commutation-money, is unconstitutional and void, because it conflicts with the fourth paragraph of the eighth section of the first article of the Constitution of the United States, which ordains that "Congress shall have power to regulate commerce with foreign nations and among the several States."

And with the second paragraph of the tenth section of the same article, which ordains that "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports except what
8 may be absolutely necessary for executing its inspection-laws."

Your orator further says that the said Commissioners of Immigration purpose and intend to exact from your orator, or the consignee of your orator's said steamships, said bonds or commutation-money, and will proceed so to do, unless restrained by the equitable writ of injunction, to the great and irreparable injury of your orator.

Your orator further avers that the sums which your orator will be compelled to pay under the provisions of said statute, if the same be enforced, will exceed the sum of three thousand dollars.

The premises considered, your orator prays that a writ of injunction issue by this honorable court to the said Commissioners of Immigration, prohibiting them from doing any act or making any attempt, or authorizing or permitting any attempt, to exact said bond or bonds or said commutation-money, or any portion thereof, from your orator or the consignee or consignees of said steamships, and for such other relief as is consistent with equity.

9 And your orator prays that a writ of subpœna may issue to said Commissioners of Immigration, commanding them to answer this bill, that such relief may be granted as is consistent with equity and good conscience.

(Signed) E. W. HUNTINGTON,
Solicitor for Plff.

Edward F. Stockmeyer, of the firm of Edward F. Stockmeyer & Co., of this city, being duly sworn, deposes and says that his said firm is the agent of the said North German Lloyd at the city of New Orleans, State of Louisiana, mentioned in the foregoing bill, and that all the matters alleged in said bill are true, and that an injunction is necessary to protect the rights of the said complainants.

(Signed) ED. F. STOCKMEYER.

Sworn to and subscribed before me this 22d day of October, 1874.

[SEAL.] (Signed) D. URBAN,
U. S. Commissioner.

Subpœna in chancery.—Issued October 23d, 1874.

10 NORTH GERMAN LLOYD *vs.* COMM'RS OF IMMIGRATION. } No. 7277.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon the Commissioners of Immigration, a corporation established by the laws of the State of Louisiana,

composed of citizens of the said State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of December, 1874, then and there to answer a bill in chancery filed against them, wherein the North German Lloyd, a corporation created by the laws of Germany, is complainant, and said Commissioners of Immigration are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief-Justice of the
11 Supreme Court of the United States of America, this 23d day of October, in the year of our Lord one thousand eight hundred and seventy-four, and the 99th year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
Dy. Clerk.

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court, on or before the first Monday of December, 1874; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
Dy. Clerk.

Marshal's return.

Received by the U. S. marshal, October 23d, 1874, and, on the same day, month, and year, served a copy hereof on the Commissioners of Immigration by handing the same to William P. Gerard, chief of the bureau of immigration, at the office of said Commissioners of Immigration, No. 16 Dryades street, in this city.

New Orleans, Oct. 23, 1874.

(Signed) S. W. REED,
Dy. U. S. Marshal.

12 *Motion for injunction.—Filed October 23d, 1874.*

Circuit court of United States for district of Louisiana.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

On motion of E. W. Huntington, solicitor for complainants, and upon showing to the court that they have this day filed their bill in equity for an injunction against the Commissioners of Immigration, it is ordered that said Commissioners of Immigration show cause, on , why the injunction herein prayed for should not be granted.

Notice of application for an injunction.—Filed October 23d, 1874.

NORTH GERMAN L'OYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

NEW ORLEANS, *Octo. 23d*, 1874.

To the Commissioners of Immigration of the State of Louisiana:

You will please take notice that I have this day filed in the
13 circuit court of the United States for the district of Louisiana a bill in equity, on behalf of the North German Lloyd, praying for

an injunction to restrain you from exacting the bonds or commutation therefor, required by the act of the State of Louisiana relative to immigrants, approved June 13, 1874, and that I will apply to the court forthwith for an injunction as prayed for in the bill.

Yours, respectfully,
(Signed) E. W. HUNTINGTON,
Solicitor for Complainant.

Marshal's return on notice.

Received Octo. 23d, 1874, by the U. S. marshal, and, on the same day, month, and year, served a copy hereof on the Commissioners of Immigration by handing the same to Wm. P. Gerard, chief of the bureau of immigration, at the office of said Commissioner of Immigration, No. 16 Dryades street, in this city.

New Orleans, Oct. 23d, 1874.
(Signed) S. W. REED,
Dy. U. S. Marshal.

Order fixing cause for hearing.—Extract from the minutes, & filed Octo. 28th, 1874.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277. In equity.

14 U. S. circuit court, district of Louisiana.

AT CHAMBERS, *Oct.* 26, 1874.

On consideration of the bill filed in this case and of the motion of the complainant for an injunction, according to the prayer of the bill, it is ordered that said motion be, and the same is, set down for hearing at the U. S. court-rooms in the city of New Orleans, on the second Monday of November, A. D. 1874, at 11 o'clock a. m., or such day subsequent thereto as solicitors for complainant may designate, and that four days' notice of the time and place fixed for the hearing of said motion be given to defendant or its counsel of record.

(Signed) W. B. WOOD,
U. S. Judge.

Marshal's return on order.

Received Octo. 31, 1874, by the U. S. marshal, and, on the 4th day of November, 1874, served a copy of within order on the Commissioners of Immigration named herein by handing the same to Wm. P. Gerrard, commissioner of immigration, in person.

New Orleans, Novr. 5th, 1874.
(Signed) S. W. REED,
Dy. U. S. Marshal.

15 *Affidavit of E. F. Stockmeyer.—Filed November 7th, 1874.*

Circuit court of the United States for the district of Louisiana.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

Edward F. Stockmeyer, agent of the complainants named in the bill of complaint herein filed, being duly sworn, deposes and says, that the

said complainants will sustain irreparable injury unless the acts sought to be enjoined be restrained by an order of this court until the decision upon the motion for the injunction prayed for in said bill of complaint.

(Signed) ED. F. STOCKMEYER.

Subscribed and sworn to before me on the 7th day of November, A. D. 1874.

[SEAL.] (Signed) J. G. EUSTIS,
U. S. Commissioner for the District of Louisiana.

Pro confesso.—From Chancery O. B., Dec'r 9th, 1874.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

16 NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

On motion of E. W. Huntington, solicitor for the complainant, and it appearing that process of subpœna has been duly served upon the defendants, the Commissioners of Immigration, and that they have failed to enter their appearance, or to demur, plead, or answer to complainant's bill within the legal delay, it is ordered that the said bill be taken pro confesso against the said defendants.

Supplemental bill and order.—Filed January 9th, 1875.

NORTH GERMAN LLOYD
vs.
COMM'RS OF IMMIGRATION. } No. 7277. In equity.

To the judges of the circuit court of the United States for the district of Louisiana:

The North German Lloyd, of Bremen, in the German Empire, and a citizen of said empire, brings this his supplemental bill against
17 the Commissioners of Immigration, of the city of New Orleans, and citizens of the State of Louisiana.

And thereupon your orators complain and say that since the filing of their original bill the said Commissioners of Immigration have been and are now continuously exacting and collecting a head or commutation tax on all alien passengers brought by your orator's vessels to this port, and that they give out they purpose and intend to compell the payment of said money until prohibited from so doing by the injunction of this honorable court. That the said Commissioners of Immigration will immediately disburse said money or pay the same into the treasury of the State of Louisiana, or otherwise dispose of the same, and thereby place it beyond the reach of your orators. That, in the event that said statute should be declared invalid, it would be out of the power of your orators to recover back the money paid by them to the defendants, as they own no property out of which a judgment against them could be satisfied.

That, by reason of the foregoing facts, your orators will sustain
18 an irreparable injury from delay unless the defendants be restrained from doing the acts sought to be enjoined pending the motion for the permanent injunction asked for by the original bill.

To the end, therefore, your orators may be protected against the in-

jury threatened as aforesaid, and that they may have the full benefit of their said suit and the proceedings therein:

May it please your honors to grant unto your orators an order restraining the defendants from doing any of the acts sought to be enjoined by the original bill pending the motion for the injunction, and such further relief as the nature of the case may require and to your honors seem' meet.

(Signed) E. W. HUNTINGTON,
Solicitor.

Edward F. Stockmeyer, being sworn, says that his firm, Edw'd F. Stockmeyer & Co., is agent of the complainants to the foregoing supplemental bill, and that all the matters therein alleged are true.

(Signed) ED. F. STOCKMEY'.

19 Subscribed and sworn to before me this 7th day of January, A. D. 1875.

[SEAL.] (Signed) J. G. EUSTIS,
U. S. Comm'r for the District of La.

Order.

AT CHAMBERS, *Jan. 8th*, 1875.

Leave is given the complainant to file the foregoing supplemental bill.

(Signed) W. B. WOODS,
U. S. Judge.

Notice of motion for an injunction.—Filed January 11th, 1875.

U. S. circuit court, district of Louisiana.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

To the Commissioners of Immigration of the State of Louisiana:

You will please take notice that I have this day filed in the circuit court of the United States for the district of Louisiana a supplemental bill in equity on behalf of the complainant in the above-entitled cause, and that I will, on Thursday, the 21st day of January, 1875, at 10 o'clock a. m.,
20 at the U. S. court-rooms, in the custom-house building, at the city of Mobile, Alabama, move the court for an injunction to restrain you from exacting the bonds or commutation therefor, required by the act of the State of Louisiana, relative to immigrants, approved June 13th, 1874, as prayed for in the bill.

NEW ORLEANS, *January 9th*, 1875.

(Signed) E. W. HUNTINGTON,
Solicitor for Complts.

Marshal's return on notice.

Received Jan. 11th, 1875, by the U. S. marshal, and on the same day, month, and year served a copy hereof on the Commissioners of Immigration, represented by W. P. Gerhard, president, by handing it to Viola Reed, a servant of said Gerhard, at his (Gerhard's) office, No. 16 Dryades street, in this city, Gerhard being absent from his office at the time.

NEW ORLEANS, *Janu'y 11th*, 1875.

(Signed) C. R. STEELE,
Dy. Marshal.

Motion for injunction.—Filed January 11th, 1875.

United States circuit court, district of Louisiana.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277. In equity.

21 On motion of E. W. Huntington, solicitor for complainants, and upon showing to the court that they have filed their bill in equity for an injunction against the Commissioners of Immigration, it is ordered that said Commissioners of Immigration show cause on Thursday, the 21st day of January, 1875, at 10 o'clock a. m., at the U. S. court-rooms, in the custom-house building, at the city of Mobile, Alabama, before the Hon. W. B. Woods, circuit judge for the district of Louisiana, why the injunction prayed for should not be granted.

Subpœna in chancery on supplemental bill.—Issued January 9th, 1875.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon the Commissioners of Immigration, a corporation established by the laws of the State of Louisiana, composed of citizens of the said State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of
22 February, 1875, then and there to answer a supplemental bill in chancery, filed against them, wherein the North German Lloyd, a corporation created by the laws of Germany, is complainant, and said Commissioner' of Immigration are defendants.

Herein fail not, and have you then and there this writ, your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, this 9th day of January, in the year of our Lord one thousand eight hundred and seventy-five, and the 99th year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
Dy. Clerk.

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court, on or before the first Monday of February, 1875, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
Dy. Clerk.

Marshal's return.

Received January 14, 1875, by the U. S. marshal, and, on the 15th day of January, 1875, served a copy hereof on the Commissioners of
23 Immigration, by handing it to William P. Gerhard, the chief of the bureau of immigration, in person, in this city.

New Orleans, January 15th, 1875.

(Signed) S. W. REED,
Dy. Marshal.

Restraining order written on the original bill of complaint.—Filed Jan'ry 12th, 1875.

AT CHAMBERS, *January* 12*th*, 1875.

It being made to appear that notice of a motion for injunction, according to the prayer of the original and supplemental bills, have been given in this case to defendants, it is ordered that a restraining order forbidding said defendants from doing any of the acts sought to be enjoined by said bills as issue against them, and to remain of force until the decision of said motion.

(Signed) W. B. WOODS,
U. S. Circuit Judge.

Restraining order served on Commissioners of Immigration January 15th, 1875.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit, and district of Louisiana.

NORTH GERMAN LLOYD
vs.
COMMISSION' OF IMMIGRATION. } No. 7277.

24 The President of the United States to the Commissioners of Immigration of the State of Louisiana, greeting:

Whereas it has been represented unto us in our said circuit court, on the part of the North German Lloyd, a corporation created by the laws of Germany, in a bill in equity, and also in a supplemental bill in equity, lately exhibited against you, touching certain matters and things therein set forth; and whereas the honorable William B. Woods, one of the judges of our said court, upon due consideration thereof, has made and allowed an order in said cause, whereby you are required to show cause, on Thursday, the 21st day of January, 1875, at 10 o'clock a. m., at the U. S. court-rooms, in the custom-house building, at the city of Mobile, Alabama, why an injunction should not issue as prayed for in the said original and supplemental bills of complaint; and whereas the said judge has granted and allowed an order restraining you immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said original and supplemental bills of complaint:

25 Now, therefore, in consideration of the premises and of the allegations in the said original and supplemental bills contained, you, the said Commissioners of Immigration of the State of Louisiana, your agents, attorneys, and servants, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from in any manner exacting the bonds or commutation thereof required by the act of the State of Louisiana relative to immigrants, approved June 13th, 1874, from the complainant in this cause, and that you, the said Commissioners of Immigration of the State of Louisiana, your agents, attorneys, and servants, and each of you, remain so inhibited and restrained by the said order until the further order of our said court in the premises.

Witness the honorable Morrison R. Waite, Chief Justice of the Su-

preme Court of the United States of America, this 13th day of January, A. D. 1875, and the 99th year of the Independence of the United States of America.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

26 *Marshal's return.*

Received Jan. 14th, 1875, by the U. S. marshal, and, on the 15th day of January, 1875, served a copy hereof on the Commissioners of Immigration of the State of Louisiana by handing it to Wm. P. Gerhard, chief of the bureau of immigration in this city.

New Orleans, Jan'y 15, 1875.

(Signed) S. W. REED,
Dy. Marshal.

Motion to set aside pro confesso.—Filed and entered in chancery order-book, January 21st, 1875.

United States circuit court, district of Louisiana.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277. In equity.

On motion of Saml. R. & C. L. Walker, attys. for the Commissioners of Immigration.

Ordered that the complainants show cause on Monday, the first day of February, 1875, at 11 o'clock a. m., why, the annexed affidavits considered, the pro-confesso, entered on the 9th day of Dec., 1874, should not be set aside and the said defendants be allowed to answer, plead, or demur as they may deem proper.

27 *Order pro confesso set aside.—Extract from the minutes, January 27, 1875.*

November term, 1874.

NEW ORLEANS, *Wednesday, January 27th,* 1875.

The court was duly opened by the marshal pursuant to adjournment. Present, the honorable William B. Woods, circuit judge.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

On motion of S. R. & C. L. Walker, solicitors for the defendants, ordered that the pro-confesso entered in this case be set aside and the defendants allowed to file a demurrer, the question of costs to be considered hereafter.

Demurrer.—Filed January 27th, 1875.

Circuit court of the United States for the district of Louisiana, in the fifth judicial circuit.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

The demurrer of the Commissioners of Immigration to the bill of complaint of the North German Lloyd, complainant:

These defendants respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the
28 said bill of complaint to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur thereto, and for causes of demurrer showeth, that in case the allegations in said bill contained were true, as therein set forth, which he does not admit, the said bill contains not any matter of equity whereon to sustain such writ of injunction as is sought and prayed for in and by the said bill, nor has, by said bill, made such a case as entitles him to any injunction or relief from or against this defendant touching the matters contained in said bill, or any of such matters. Wherefore, and for other divers good causes of demurrer appearing in the said bill of complaint, these defendants doth demur to the said bill, and to all the matters and things therein contained, and humbly prays the judgment of the hon. court whether he shall be compelled to make any further or other answer to the said bill; and he prays to be dismissed hence with his reasonable cost and damages in this behalf most unlawfully sustained.

We certify that, in our opinion, the foregoing demurrer of Com-
29 missioners of Immigration to the bill of the complainants, the North German Lloyd, is well-founded in law and proper to be filed in said cause.

(Signed) SAML. R. & C. L. WALKER,
Of Counsel for Respondents.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

W. P. Gerhard, being duly sworn, does depose and say that he is the president of the bureau of immigration, defendant in the above cause; that he has read the foregoing demurrer to the bill of complaint in this, and that this demurrer is not interposed to delay the proceedings in said suit.

Order: Continuance of rule for injunction.—Extract from the minutes, Jan. 27th, 1875.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

By consent of counsel the motion for injunction herein is continued till Friday, 29 instant, at a. m.

Order on the motion for injunction.—Extract from the minutes, Jan'ry 29th, 1875.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

The motion for injunction was called.
30 E. W. Huntington for mover.
S. R. & C. L. Walker for defendants.

When, after hearing argument in part, it is ordered that the motion be continued until the same can be fully heard, and that upon complainants giving bond and security in the sum of $1,500, the restraining order shall remain in force until the motion for injunction be heard.

Bond for injunction.—Recorded & filed February 3d, 1875.

UNITED STATES OF AMERICA:

Know all men by these presents that we, North German Lloyd, as principal, and Edward F. Stockmeyer & Co., as surety, are held and firmly bound, jointly and severally, unto the Commissioners of Immigration of the State of Louisiana, in the sum of fifteen hundred dollars, lawful money of the United States of America, to be paid to the said Commissioners of Immigration, their heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the third day of February, in the year of our Lord eighteen hundred and seventy-five.

31 Whereas the said North German Lloyd has presented a bill in equity to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for the writ of injunction restraining and enjoining the said Commissioners of Immigration from exacting the bonds or the commutation-money indicated in the law of Louisiana relative to immigration, and whereas an order has been issued by said court restraining the defendants from doing the acts sought to be enjoined pending the motion for the injunction:

Now, the condition of the above obligation is, that we, the above-bounden North German Lloyd and Edward F. Stockmeyer & Co., will well and truly pay to the said Commissioners of Immigration, the defendant in said suit, all such damages as they may recover against us in case it should be decided that the said restraining order was wrongfully obtained.

(Signed) NORTH GERMAN LLOYD,
By the agents, ED. F. STOCKMEYER & CO. [L. S.]
ED. F. STOCKMEYER & CO. [L. S.]

Signed, sealed, and delivered in the presence of—

Motion and order.—Rule for an injunction fixed.—Extract from the minutes, March 15th, 1875.

32 NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

On motion of Samuel R. & C. L. Walker, solicitors for respondents, it is ordered that the motion for an injunction in this cause be assigned

for trial on Wednesday, the twenty-fourth day of March, 1875, at 11 o'clock a. m., and that E. W. Huntington, esq., solicitor for complainant, be duly notified hereof.

Plea to the jurisdiction of the court.— Filed March 18th, 1875.

NORTH GERMAN LLOYD
vs.
THE COMMRS. OF IMMIGRATION. } No. 7277.

And now comes the respondents in the above-styled cause, and for further plea and reason why the said action should not be maintained, aver—

1°. That this suit is a suit against the State of Louisiana, and as such is in conflict with the provisions of eleventh amendment of the Constitution of the United States; and, secondly, that there is no act of Congress giving to the circuit court of the United States power to
33 supervise a State law, or to annul it as being in contravention with the Constitution of the United States.

(Signed) SAML. R. & C. L. WALKER,
Solicitors for Respondents.

Submission of motion for injunction.—Extract from the minutes, March 24th, 1875.

NORTH GERMAN LLOYD
vs.
COMMISSIONER' OF IMMIGRATION. } No. 7277.

The motion for injunction was resumed.
E. W. Huntington for movers.
S. R. & C. L. Walker for defendants.
When, after hearing argument, the court took time to advise.

Order: Injunction granted.—Entered and filed March 25th, 1875.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

The motion of the complainant for an injunction as prayed for in the bill, due notice whereof had been given, came on to be heard, and was argued by counsel.

On consideration whereof, it is ordered by the court that an injunction issue restraining and prohibiting the defendants, the Commis-
34 sioners of Immigration, from exacting and collecting a fee of $2 from any immigrant or passenger landing at this port, who shall be found to be neither a lunatic, or idiot, or dumb, blind, maimed, or infirm, or who may have to be sent to the Charity Hospital on account of illness, or above the age of 60 years, or widow with a child or children, or a person unable to take charge of himself or herself without becoming a public charge.

It is further ordered that said injunction remain in full force until a final hearing and decision of the case, or until the further order of the court or a judge thereof.

(Signed) W. B. WOODS, *Judge.*

Injunction.—Issued March 25th, 1875.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit, and district of Louisiana.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

The President of the United States to the Commissioners of Im-
35 migration of the State of Louisiana, greeting:

Whereas it has been represented unto us in our said circuit court, on the part of the North German Lloyd, a corporation created by the laws of Germany, in a bill in equity lately exhibited against you touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, and of the order of our said court, you, the said Commissioners of Immigration of the State of Louisiana, your agents, attorneys, and servants, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from exacting and collecting a fee of two dollars from any immigrant or passenger landing at this port who shall be found to be neither a lunatic or idiot, or dumb, blind, maimed, or infirm, or who may have to be sent to the Charity Hospital on account of illness, or above the age of 60 years, or widow with a child or children, or a person unable to take charge of himself or herself without becoming a public charge, and that you, the said Commissioners of Immigration
36 of the State of Louisiana, your agents, attorneys, and servants, and each of you, remain so enjoined until a final hearing and decision of the case, or until the further order of the court or a judge thereof.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 25th day of March, A. D. 1875, and the 99th year of the Independence of the United States of America.

[SEAL.] (Signed) F. B. VINOT,
Dy. Clerk.

Marshal's return.

Received March 27th, 1875, by the U. S. marshal, and, on same day, month, and year, served a copy of within writ of injunction on the Commissioners of Immigration named herein, by leaving the same at their office, No. 16 Dryades st., in the hands of H. Von Werthin, their clerk, the commissioners being absent at the time of service.

New Orleans, April 5th, 1875.

(Signed) S. W. REED,
Dy. U. S. Marshal.

37 *Motion to amend injunction.—Presented March 30th, 1875.—Entered and filed March 31st, 1875.*

U. S. circuit court.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277. In equity.

On motion of Saml. R. & C. L. Walker, solicitors for respondents, and on suggesting to the court that the injunction herein issued 25th

March against respondents should not extend to any vessel other than those of the complainant:

It is ordered that the said writ of injunction herein granted be so modified as not to comprehend any passenger or immigrants not landed or landing from the vessels of the North German Lloyd, the complainants, it being intended to apply only to the immigrants by the said line of the North German Lloyd.

(Signed) W. B. WOODS, *Judge.*

No objection.

(Signed) E. W. HUNTINGTON.

Motion and order amending order of March 31st, 1875.—Extract from the minutes, April 3d, 1875.—Entered and filed April 3d, 1875.

U. S. circuit court.

NORTH GERMAN LLOYD *vs.* COMMISSIONERS OF IMMIGRATION. } No. 7277.

38 On motion of E. W. Huntington, solicitor for complainant, and on suggesting to the court that the decree herein rendered on the motion for an injunction is incorrectly entered on the minutes of the court, it is ordered that said entry be amended so as to read as follows: It is ordered by the court that an injunction issue restraining and prohibiting the defendants, the Commissioners of Immigration, from exacting from the plaintiff, the North German Lloyd, or from the master or consignee of any of the plaintiff's vessels, the bonds, or commutation therefor, required by the law of Louisiana relative to immigration, approved June 13, 1874, entitled an act to repeal the act of March 8, 1869, creating the commission of immigration, &c., for any passenger or emigrant landed at this port who shall be found to be neither a lunatic or idiot, or dumb, blind, maimed, or infirm, or who may have to be sent to the Charity Hospital on account of illness, or above the age of sixty years, or widow with a child or children, or a person unable to take charge of himself or herself without becoming a public charge.

39 And it is further ordered that said injunction remain in full force until a final hearing and decision of the case, or until the further order of the court or a judge thereof.

Injunction.—Issued April 3rd, 1875.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit, and district of Louisiana.

NORTH GERMAN LLOYD *vs.* COMMRS. OF IMMIGRATION. } No. 7277.

The President of the United States to the Commissioners of Immigration of the State of Louisiana, greeting:

Whereas it has been represented unto us in our said circuit court on the part of the North German Lloyd, a corporation created by the laws

of Germany, in a bill in equity lately exhibited against you touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises, and of the allegations in said bill contained, and of the order of our said court, you, the said Commissioners of Immigration of the State of Louisiana, your agents, attorneys, and servants, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from exacting from the plaintiff, the North
40 German Lloyd, or from the master or consignee of any of the plaintiff's vessels, the bonds or commutation therefor required by the law of Louisiana relative to immigration, approved June 13th, 1874, entitled "An act to repeal the act of March 8th, 1869, creating the commission of immigration," &c. for any passenger or immigrant landed at this port who shall be found to be neither a lunatic or idiot, or dumb, blind, maimed, or infirm, or who may have to be sent to the Charity Hospital on account of illness, or above the age of sixty years, or widow with a child or children, or a person unable to take charge of himself or herself without becoming a public charge; and that you, and each of you, remain so enjoined until a final hearing and decision of the case, or until the further order of the court or a judge thereof.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at New Orleans, this 5th day of April, A. D. 1875.

[SEAL.] (Signed) F. B. VINOT,
Dy. Clerk.

Marshal's return.

Received April 5th, 1875, by the U. S. marshal, and on the 6th
41 day of same month and year served a copy of within restraining order on the Commissioners of Immigration named herein by handing the same to W. S. Bailey, the president of the board.

New Orleans, April 6th, 1875.

(Signed) S. W. REED,
Dy. U. S. Marshal.

Answer.—Filed April 5th, 1875.

U. S. cir. court, district of Louisiana.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

The answer of the commissioners of immigration, defendants, to the bill of complaint of the North German Lloyd, complainant:

These defendants, now and at all times hereafter, saving and reserving to themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is, or are, material or necessary for him to make answer unto, this defendant, for answering, saith these defendants admit that they are a corporate body created by the laws of the State
42 of Louisiana, and that the words and figures of the several sections numbering from section two to section seven, inclusive, as in said complainant's bill set forth, are parts of the said act creating the

said corporation, to wit, the Bureau of Immigration, approved July 13th, 1874; and as to so much of complainant's bill as avers and charges that the said sections of said act is unconstitutional and void, as being in conflict with the fourth paragraph of the eighth section of the first article of the Constitution of the United States, and in conflict with the second paragraph of the tenth section of the same article, as in complainant's bill set forth, this defendants answering deny such to be the fact, and aver and charge the truth to be that the said section of the said act in complainant's bill set forth is a police law of the State of Louisiana, made for the benefit and protection of the citizens of Louisiana, which the said State may lawfully make, and that the said law affects persons coming from foreign countries into the State of Louisiana, only after they have come upon the soil of the said State of Louisiana voluntarily,

43 and have ceased to be in any manner subject to the laws of commerce, and as subject to her jurisdiction and her laws, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint, contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is not true to knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) W. MILLER OWEN,
Commissioner of Immigration for the Board.

UNITED STATES OF AMERICA,
District of Louisiana:

W. Miller Owen, Commissioner of Immigration, who, being duly sworn, does depose and say: That he is the acting chief of the Bureau of Immigration, the defendants in this case; that he has read the same,

44 and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

(Signed) W. MILLER OWEN.

Subscribed and sworn to before me this 12th day of April, 1875.

F. B. VINOT,
U. S. Consul.

Entry at rules.—From chancery, O. B., April 5th, 1875.

NORTH GERMAN LLOYD
vs.
COMMRS. OF IMMIGRATION } No. 7277.

The defendants herein, by their solicitors, Saml. R. & C. L. Walker, have this day filed their answer to the complainant's bill.

Replication.—Filed April 13th, 1875.

U. S. circuit court.

NORTH GERMAN LLOYD
vs.
CMMRS. OF IMMIGRATION. } No. 7277.

The replication of the North German Lloyd, plaintiff, to the answer of Commissioners of Immigration, defendant:

The said plaintiff says his bill is true, and the defendants' answer, as set forth, is not true; and this he is ready to prove.

(Signed) E. W. HUNTINGTON,
Solicitor.

45 *Entry in chancery, O. B., April 13th, 1875.*

NORTH GERMAN LLOYD
vs.
COMMRS. OF IMMIGRATION. } No. 7277.

The complainant herein, by his solicitor, has this day filed his replication to the answer of the defendants.

Motion and order: Case fixed.—Extract from the minutes, May 3d, 1875

NORTH GERMAN LLOYD
vs.
COMMRS. OF IMMIGRATION. } No. 7277.

On motion of Saml. R. & C. L. Walker, solicitors for respondents, it is ordered that this cause be fixed for trial on Thursday, the 27th day of May, 1875, at 12 o'clock m., and that E. M. Huntington, esq., solicitor for complainant, be duly notified hereof.

Hearing and submission of cause.—Extract from the minutes, May 27th, 1875.

46 NORTH GERMAN LLOYD
vs.
COMMRS. OF IMMIGRATION. } No. 7277.

This cause was called for trial.
E. W. Huntington, for complainants.
S. R. & C. L. Walker, for defendants.
When, after hearing argument, the court took time to advise.

Decree.—Entered in minute-book, and filed May 31, 1875.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7275.

This cause came on to be heard upon the bill, answer, replication, and proofs, and was argued by counsel.

On consideration whereof it is ordered, adjudged, and decreed by the court that the Commissioners of Immigration be perpetually enjoined and prohibited from exacting from the complainant, the North German Lloyd, or from the master or consignee of any of complainant's vessels, the bonds or commutation therefor, required by the law of Louisiana relative to immigration, approved June 13th, 1874, entitled An
47 act to repeal the act of March 8th, 1869, creating the commissioners of immigration, &c., for any passenger or immigrant landed at this port, who shall be found to be neither a lunatic or idiot, or dumb, blind, maimed, or infirm, or who may have to be sent to the

Charity Hospital on account of illness, or a person unable to take charge of himself or herself without becoming a public charge.

It is further ordered that the cost of the suit be taxed by the clerk and paid by the defendants.

May 31, 1875.

(Signed) W. B. WOODS, *Judge.*

Injunction.—Issued June 2d, 1875.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit, and district of Louisiana.

NORTH GERMAN LLOYD *vs.* COMMRS. OF IMMIGRATION. } No. 7275.

The President of the United States to the Commissioners of Immigration of the State of Louisiana, greeting:

Whereas it has been represented unto us in our said circuit court on the part of the North German Lloyd, a corporation created by
48 the laws of Germany, in a bill in equity lately exhibited against you, touching certain matters and things set forth:

Now, therefore, in consideration of the premises, and of the allegations in said bill contained, and of the decree of our said court, you, the said Commissioners of Immigration of the State of Louisiana, your agents, attorneys, and servants, and each of you, are hereby perpetually enjoined and prohibited, under the penalty of the law, from exacting from the complainant, the North German Lloyd, or from the master or consignee of any of complainant's vessels, the bonds or commutation thereof required by the law of Louisiana relative to immigration, approved June 13th, 1874, entitled an act to repeal the act of March 8th, 1869, creating the Commission of Immigration, &c., for any passenger or immigrant landed at this port who shall be found to be neither a lunatic or idiot, or dumb, blind, maimed, or infirm, or who may have to be sent to the Charity Hospital on account of illness, or a person unable to take charge of himself or herself without becoming a public charge.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this second day of June, A. D.
49 1875, and the 99th year of the Independence of the United States of America.

[SEAL.] F. B. VINOT, *Dy. Clerk.*

Marshal's return.

Received June 2d, 1875, by the U. S. marshal, and, on the 7th day of July of same year, served a copy of within writ of injunction on the board of immigration named herein, by handing the same to W. M. Owen, the secretary.

New Orleans, July 19, 1875.

(Signed) S. B. PACKARD, *U. S. Marshal,*
By S. W. REED, *Dy. U. S. Marshal.*

Petition and order for appeal.—Filed June 5th, 1874.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, and district of Louisiana.

NORTH GERMAN LLOYD
vs.
COMMISSIONERS OF IMMIGRATION. } No. 7277.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The petition of the Commissioners of Immigration, respondents in this cause, with respect, represents that, on the day of , 1874,
50 complainants in this suit, the North German Lloyd, a foreign corporation, filed their bill of complaint against the Commissioners of Immigration, and prayed an injunction, perpetually enjoined the said defendants from exacting certain bonds or receiving commutation-money therefor in accordance with the act of legislature of the State of Louisiana creating said board or bureau of immigration, approved March 13th, 1874, on the ground that certain sections in said act were in conflict with the certain provisions of the Constitution of the United States, as in said bill set forth, and that, on the day of June, A. D. 1875, a final decree or judgment was rendered by the hon. court, decreeing that the said respondents be perpetually enjoined and prohibited from exacting from the complainant, the North German Lloyd, or from the master or consignee of any of complainant's vessels, the bonds or commutation therefore, required by the law of Louisiana, relative to immigration, approved June 13th, 1874, entitled an act to repeal the act of March, 1869, creating the commission of immigration, &c., for any passenger or emigrant landed at this port who shall be found to be neither a lunatic or idiot, or dumb, blind, maimed, or infirm, or
51 who may have to be sent to the Charity Hospital on account of illness, or a person unable to take charge of himself or herself without becoming a public charge. That your petitioners are advised that the said final decree is erroneous, and they humbly *cause* that an appeal be granted to the Supreme Court of the United States be granted petitioners, conditioned and returnable according to law; and that all proper orders on the premises be granted; and that the said complaintants be duly cited to answer petitioners, appeal.

(Signed) SAML. R. & C. L. WALKER,
Of Counsel for Respondents.

Service accepted and citation waived.

(Signed) E. W. HUNTINGTON,
Solicitor.

Order.

An appeal is allowed in this case, as prayed for, returnable to the Supreme Court of the United States on the second Monday of October next, the appellants giving bond in the sum of five hundred dollars, with good and solvent security, and conditioned as the law directs.

New Orleans, June 5th, 1875.

(Signed) W. B. WOODS, *Judge.*

52 *Bond for appeal.—Filed June 7th, 1875.*

U. S. cir. court.

THE NORTH GERMAN LLOYD
vs.
THE COMMISSIONERS OF IMMIGRATION. } No. 7277.

UNITED STATES OF AMERICA:

Know all men by these presents that we, the Commissioners of Immigration, by W. S. Bailey, chief of the bureau of immigration, and W. M. Owen, of New Orleans, as surety, are held and firmly bound, jointly and severally, unto the complainants in equity, the "North German Lloyd," in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said complainants, the North German Lloyd, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the fifth day of June, in the year of our Lord eighteen hundred and seventy-five.

Whereas, in the cause in equity entitled The North German Lloyd vs. The Commissioners of Immigration, No. 7277, in the circuit court of the U. S. for the district of Louisiana, the defendants have this day presented a petition to the honorable the circuit court of the United
53 States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for the allowing of an appeal to the Supreme Court of the United States from a certain decree rendered by the Hon. W. B. Woods, judge of the said circuit court, on the 31st day of May, 1875, in the said cause No. 7277, in order to reverse or correct said decree:

Now, the condition of the above obligation is, that we, the above bounden Commissioners of Immigration, shall prosecute their said appeal, and answer all costs, if defendants shall fail to make good their plea, then their obligation shall be void; otherwise to remain in full force and virtue.

(Signed) W. S. BAILEY, [L. S.]
Chief of the Board of Immigration.
(Signed) W. M. OWEN. [L. S.]

Signed, sealed, and delivered in the presence of—

(Signed) C. L. WALKER.

Approved.
(Signed) W. B. WOODS, *Judge.*

54 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit, and district of Louisiana, do hereby certify that the foregoing 53 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The North German Lloyd

versus Commissioners of Immigration, No. 7277 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and seal of said court, at the city of New Orleans, this 22d day of July, A. D. 1875.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, W. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit, and district of Louisiana, was, at the time of signing the said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 22d day of July, A. D. 1875.

W. B. WOODS, *Judge.*

(Indorsement on cover:) No. 633. The Commissioners of Immigration, appellants, vs. The North German Lloyd. Louisiana C. C. U. S. Filed 5th October, 1875.

Supreme Court of the United States.

No. 633, October Term, 1875.

COMMISSIONERS OF IMMIGRATION, Appellants,

versus

THE NORTH GERMAN LLOYD.

BRIEF FOR APPELLANTS.

SAM'L R. & C. L. WALKER,
~~and PIKE & JOHNSON,~~
Counsel for Appellants.

Isaac T. Hinton, Brief Printer, No. 27 Commercial Place.

Supreme Court of the United States.

No. 633, OCTOBER TERM, 1875.

COMMISSIONERS OF IMMIGRATION, APPELLANTS,

versus

NORTH GERMAN LLOYD, APPELLEE.

BRIEF OF APPELLANTS.

STATEMENT OF CASE.

On the 22d day of the month of October, 1874, E. F. Stockmeyer of New Orleans, claiming to be the agent of the North German Lloyd, alleged to be a corporation chartered by the laws of Germany, made the following oath.—Page Record.

OATH.

"Edward F. Stockmeyer, of the firm of Edward F. Stockmeyer & Co., of this city, being duly sworn, deposes and says, that his said firm is the agent of the said North German Lloyd at the city of New Orleans, State of Louisiana, mentioned in the foregoing bill, and that all matters alleged in said bill are true, and

that an injunction is necessary to protect the rights o the said complainants.

(signed) E. F. STOCKMEYER.

Sworn to and subscribed before me, this 22d day of October, 1874.

(signed) D. URBAN,
U. S. Commissioner."

On the 23d day of October, he filed his bill of complaint against the Commissioners of Immigration, a corporation chartered by the laws of Louisiana. The bill sets forth that the complainant is the owner of a line of steamships plying and engaged in the business of carrying freight and passengers between the city of New Orleans and the ports of France and Germany. The bill recites sections two, three, five, and seven of the act of June 13,1874, to repeal the act of March 13,1869, creating the Commission of Immigration, to establish a Bureau of Immigration, together with proper police regulations, and Acts of Louisiana, 1874, page 271; and charges that said statute, so far as it requires the said bonds or payment of said commutation money, is unconstitutional and void, because it conflicts with the fourth (third) paragraph of the eighth section of the first article of the Constitution of the United States—"Congress shall have power to regulate commerce," etc., and with the second paragraph of the tenth section of the same article—"no State shall, without the consent of Congress, lay any imposts or duties on imports and exports except what may be absolutely necessary for executing its inspection laws." The bill charges that the said Commissioners of Immigra-

tion purpose and intend to exact from your orator's said steamships said bonds or commutation money, and will proceed to do so unless restrained by the equitable writ of injunction, to the great and irreparable injury of your orators. The prayer of the bill is, that a writ of injunction issue to the said Commissioners of Immigration, prohibiting them from doing any act or making any attempt to exact said bond or said commutation money, or any portion thereof. Read P.

On the 9th day of January, 1875, the complainants filed a supplemental bill, asking, for the reasons set forth therein, that an order issue from the Court restraining the defendants from doing any of the acts sought to be enjoined by the original bill for the injunction, which order was granted by the Court on complainants giving bond for $1500; thus granting the prayer of the bill before trial.

On the 27th of January, 1875, the defendants filed a general demurrer.

On the 18th of March, 1875, a plea to the jurisdiction was filed, for which see transcript of Record, page ____. On the 5th of April, 1875, the answer of the respondents was filed.

After due proceedings, the cause came up for trial on the 27th day of May, and on the 31st day of the same month the following decree of the Court was entered and filed:

Decree entered on Minute Book and filed May 31, 1875.

NORTH GERMAN LLOYD

versus No. 7277.

COMMISSIONERS OF IMMIGRATION.

This cause came on to be heard upon the bill, answer, replication and proofs, and was argued by counsel. On consideration whereof, it is ordered, adjudged and decreed by the Court, that the Commissioners of Immigration be perpetually enjoined and prohibited from exacting from the complainant, the North German Lloyd, or from the master or consignee of any of complainant's vessels, the bonds or commutations therefor, required by the law of Louisiana relative to immigration approved June 13th, 1874, entitled, an Act to repeal the Act of March 8th, 1869, creating the Commissioners of Immigration, etc., for any passenger or immigrant landed at this port who shall be found to be neither a lunatic or idiot, or dumb, blind, maimed or infirm, or who may have to be sent to the Charity Hospital on account of illness, or a person unable to take charge of himself or herself without becoming a public charge.

It is further ordered, that the cost of the suit be taxed by the clerk and paid by the defendants.

May 31, 1875.

(signed) W. B. WOODS,
Judge.

I.

OF THE JURISDICTION OF THE CIRCUIT COURT.

The suit is virtually against the State of Louisiana, and contravenes the eleventh amendment of the Constitution of the United States.

The complainant's action is brought against the Commissioners of Immigration, composing the Bureau

of Immigration of the State of Louisiana Acts of Louisiana, 1874, page 271.

The Bureau of Immigration of Louisiana is, as defined in the Civil Code of Louisiana, Article 429, a political corporation, having as its principal object the administration of a portion of the State, and to whom a part of the power of the Government is delegated for that purpose. It is a part of the machinery of the Government of the State of Louisiana, and the Governor of the State is *ex officio* a member of the commission. 3d section Acts 1874, page 271.

A suit therefore, we conceive, commenced and prosecuted against such a corporation, *eo nomine*, is a suit against the State of whose Government it is a part, and in conflict with the eleventh amendment of the Constitution of the United States, which says: "The judicial power of the United States shall not be construed to extend to any case in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State." That this suit by an alien against the said defendants is a suit against the State although not named as a party in the bill, and is clearly within the prohibition of the amendment, unless that may be done by indirection which the Constitution of the United States forbids to be done directly. It is extremely probable that a misconception of the facts and points decided in the case of Osborne vs. The United States Bank, 9 Wheat. 738, has furnished the precedent for this most extraordinary proceeding.

is apparent from the record.

We do not find in the facts of that case, nor derive from the language of the Court, the authority or precedent which justifies the proceeding attempted in this case.

The case of Osborne, 9 Wheat., was peculiar and exceptional. The whole fiscal system of the United States Government was at stake.

The Court said: "The eleventh amendment of the Constitution has exempted a State from the suits of citizens of other States or aliens; and the very difficult questlon to be decided is, whether, in such a case, the Court may act upon the agents employed by the State, and on the property in their hands."

Osborn vs. The United States, 9 W. 847.

"The State not being a party on the Record, and the Court having jurisdiction over those who are parties on the Record, the true question is, not one of jurisdiction, but whether, in the exercise of its jurisdiction, the Court ought to make a decree against the defendants; whether they are to be considered as having a real interest, or as being only nominal parties.

Osborn vs. U. S. Bank, 9 Wheat. 858.

"That this question is attended with great difficulty, has not been concealed or denied; but when we reflect that the defendants, Osborn and Harper, are incontestably liable for the full amount of the money taken out of the bank; that the defendant Currie is also responsible for the sum received by him, it having come to his hands with the full knowledge of the unlawful means by which it was acquired; that the defendant Sullivan is also responsible for the sum specifically received by him, with notice that it was the property of the Bank, unless the form of having made an entry on the books of the treasury can countervail the fact, that it was in truth kept untouched in a trunk by itself as a deposit, to await the event of the

pending suit respecting it. We may lay down as a proposition safely to be affirmed, that all the defendants in the cause were liable in an action at law for the amount of this decree. The money of the Bank had been taken without authority, by some of the defendants."

9 Wheat., page 859.

It seems, from the facts and reasoning of the Court, that the ground for the exercise of jurisdiction in the case was the power of the Court over a specific fund under the control of the Court, which had been wrongfully taken from the Bank.

II.

There is no act of Congress giving to the Circuit Courts of the United States jurisdiction—meaning original jurisdiction—to supervise a State statute or annul it, as being in contravention with the Constitution of the United States.

The power to declare a State law in conflict with the Constitution of the United States, resides alone in the Supreme Court of the United States after its constitutionality has been sustained by a court of the State of the last resort. In speaking of this subject, Judge Cooley says:

"State Legislation in violation of the 14th amendment, or of any other provision sustained by a State Court of the last resort, may be set aside by the Federal Supreme Court on appeal, as provided by the judiciary act; but when general original jurisdiction to supervise and review State statutes shall be conferred on the Federal judiciary, an innovation will be made in our

system, which ought not to be made without careful consideration and deliberate intention. Cooley's Constitutional Limitation, page 574, note."

The mode provided for the review of the decisions of State courts in such cases was provided for by the 25th section of the act of 1789, amended by the act of July 5th, 1867, which last act is now the law by the Revised Statutes of the United States. This law has been lately the subject of able discussion in the case of Murdock vs. Memphis, 20 Wall. 590. The Court said:

"But we have not yet considered the most important part of the statute, namely, that which declares that it is only upon the existence of certain questions in the case, that this Court can entertain jurisdiction at all. Nor is the mere existence of such a question in the case sufficient to give jurisdiction. The question must have been decided in the State court. Nor is it sufficient that such a question was raised and was decided. It must have been decided in a certain way; that is, against the right set up under the Constitution, laws, treaties or authority of the United States. The federal question may have been erroneously decided. It may be quite apparent to the Court, that a wrong construction has been given to the federal law; but if the right claimed under it by plaintiff in error has been conceded to him, this Court cannot entertain jurisdiction of the case. So very careful is the statute, both of 1789 and 1867, to narrow, to limit, and to define the jurisdiction which this Court exercises over the judgments of the State courts. Is it consistent with this extreme caution to suppose that Congress intended, when those cases came here, that this Court should not only examine those questions, but all others found in the record—questions of law, of State statutes, of controverted facts, and conflicting evidence? Or is it the more reasonable inference that Congress intended that the case should be

brought here that those questions might be decided, and finally decided, by the Court established by the Constitution of the Union, and the Court which has always been supposed to be not only the most appropriate, but the only proper tribunal for their final decision? No such reason, nor any necessity, exists for the decision by this Court of other questions in those cases. The jurisdiction has been exercised for nearly a century without serious inconvenience to the administration of justice. The State courts are the appropriate tribunals, as this Court has repeatedly held, for the decision of questions arising under the local law, whether statutory or otherwise; and it is not lightly to be presumed that Congress acted upon the principle which implied distrust of their integrity or of their ability to construe those laws correctly." 20 Wall, 590.

We think the case at bar comes within the spirit of the reasoning in the case of the Governor of Georgia vs. Madrazo, 1 Pet. 110. In that case, a claim was made upon the Governor as a governor He was sued, not by his name, but his title. The demand made upon him was not made personally, but officially, and the Court said: "In such a case, where the chief magistrate is sued, not in his own name, but by his style of office, and the claim made upon him is entirely in his official character, we think the State itself may be considered as a party to the record. If the State is not a party, there is no party against whom a decree can be made. No person in his natural capacity is brought before the Court as defendant." 1 Pet. 124.

Now, this suit is against the Commissioners of Immigration *eo nomine*. Not one of the individuals composing the Bureau is mentioned by name. The subpœna is issued and served upon one of them then acting as chief of the Bureau of Immigration. This cites

the corporation as a corporation, not the president individually. The answer was filed by his successor in office in his official capacity only. See Jefferson vs. Kaiser, 17 A. 176. The corporation is alone before the Court. We have shown that this body is a part of the governmental machinery of the State of Louisiana, and the State itself must be considered a party to the record.

In this connection, we call the attention of the Court to a point urged before the Circuit Court under the general demurrer, which is patent on the record, to wit:

That the complainant's action is an attempt to make the pursuit of the auxiliary writ of injunction in the Circuit Court the basis of original jurisdiction. We conceive the converse of this proposition to have been long since established by repeated decisions of this Honorable Court. The fourteenth section of the judiciary act, Revised Statutes of the United States, sec. 716, says: "The Supreme Court and the Circuit and District courts shall have power to issue the writ of *scire facias*. They shall also have power to issue all writs not specifically provided by statute, which may be necessary for the exercise of respective jurisdictions and agreeably to the usages and principles of law." It is under the last clause that the Circuit Court derived the power to issue the writ of mandamus, injunction, and other writs necessary to the exercise of their respective jurisdictions, in cases when not specific res- provided for by statute.

In construing this section, this Court, in Bath County

vs. Amy, 13 Wallace, 248, 249, says: "Among these other writs, no doubt, mandamus is included," (and for the same reason, writs of injunction,) * * * * and they cite the language of the Court in McClung vs Silliman, 12 Pet. 584, that the 14th section of the act under consideration—the Judiciary Act—could only have intended to vest the power in cases where the jurisdiction already existed, and not where it is to be courted or acquired by means of the writ proposed be sued out;" adding, "in other words, the writ cannot be used to confer a jurisdiction which the Circuit Court would not have without it. It is authorized only when ancillary to a jurisdiction already acquired."

See Bath Co vs. Amy, 13 Wall. 249, and cases cited.

We now propose to show, that although the judicial power of the United States extends to all cases arising under the constitution and laws of the United States, there are a class which do not become, under the Constitution, subject to the judicial power until a case arises, in law or equity, on which the judicial power can operate, and that Congress, in such cases, cannot confer, an original jurisdiction on the Circuit Court, nor can the Circuit Court acquire jurisdiction until a case is made. What, then, is a case?

A case arises within the meaning of the Constitution whenever any question regarding the constitution, laws or treaties of the United States has assumed such form that the judicial power is capable of acting. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. Marshall, C. J., in Osborn

vs. United States Bank, 9 Wheat. 819. By cases in law arising under the Constitution, etc., are meant suits in which legal rights are tobe ascertained and determined in contradistinction to equitable rights. By cases in equity, are to be understood suits in which relief is sought according to the principles and practice of the equity jurisdiction as establishedin England. 3 Wheat. 212, Robinson vs. Campbell; 8 Wheat. 108. Curtis Comm. 587.

Thus, the Constitution declares that in all other cases within the judicial power except those of which the Supreme Court has original jurisdiction, it shall have appellate jurisdiction.

"As, for example, with regard to that large class of cases arising under the Constitution and laws of the United States, in which the Constitution or supremacy is drawn into question, Congress has not established, and from the nature of the case could not establish, an original jurisdiction that would reach such cases, which must be commenced and prosecuted, to a certain stage, before it appears that such a question arises."

Curtis Comm. pages 160, 123.

"Efforts have been made to fix the precise sense of the Constitution when it vests jurisdiction in the General Government in causes arising under the laws of the United States. To me the question appears susceptible of a very simple solution: that all depends upon the identity of the case supposed. According to which idea, a case may be such in its very existence, or it may become so in its progress. In this class of cases, the occurrence of a question makes the case, and transfers it, as provided for under the 25th section of the Judiciary Act, to the jurisdiction of the United States. And this appears to me to present the only sound and practical construction of the Constitution on this subject; for no other case does it re-

gard as necessary to place under the control of the General Government. It is only when the case exhibits one or the other of these characteristics, that there can be no contrariety of construction; and what else had the Constitution to guard against as to cases of the first description, *ex necessitate rei*, the courts of the United States must be susceptible of original jurisdiction; and as to all other cases, I should hold them also susceptible of original jurisdiction, if it were practicable, in the nature of things, to make out the definition of the case, so as to bring it under the Constitution judicially, upon an original suit. But until the plaintiff can control the defendant in his pleadings, I see no practicable mode of determining when the case does occur, otherwise than by permitting the cause to advance until the case for which the Constitution provides shall actually arise. If it never arises, there can be nothing to complain of; and such are the provisions of the twenty-fifth section. The cause might be transferred to the Circuit Court before an adjucation takes place; but I can perceive no earlier stage at which it can possibly be predicated of such a case, that it is one within the Constitution, nor any possible necessity for transferring it then, or until the Court has acted upon it to the prejudice of the United States. It is not, therefore, because Congress may not vest an original jurisdiction, where they can constitutionally vest in the Circuit Courts appellate jurisdiction, that I object to this general grant of the right to sue; but because that the peculiar nature of this jurisdiction is such, as to render it impossible to exercise in a strictly original form, and because the principle of a possible recurrence of a question as a gronnd of jurisdiction is transcending the bounds of the Constitution, and placing it on a ground which will admit of an erroneous accession, if not an unlimited assumption, of jurisdiction."

Opinion of Johnson, J., dissenting in Osborn vs. United States Bank, 9 Wheat. 888, 889.

We do not view this case in the manner and form in which it is presented in the bill filed, as a case within

the judicial power of the United States. It is plain that the gravamen of the bill is the nullity of a statute of the State of Louisiana; and in such view the case arises, not under the Constitution of the United States, but directly under a State law. Had the case been brought before the Circuit Court according to the usual course of the law, it would have reached this august tribunal upon writ of error; but brought into the Circuit Court prematurely, as it were by a species of Cæsarian operation, before its proper period of legal gestation had arrived, we have the anomalous condition presented of cases in equity on appeal involving but a question of law.

By the 34th section of the Judiciary Act, it is provided that the laws of the several States, except when the Constitution, treaties or statutes of the United Staties otherwise provide, shall be regarded as rules of decision in trials at common law in the courts of the United States where they apply.

It is also a rule, "that the construction of the statutes of the State by its highest court is to be regarded as determining their meaning, and generally as binding on the courts of the United States, cannot be questioned." Supervisors vs. United States, 18 Wall. 82. Now, the Supreme Court of Louisiana has decided, in the case of the Commissioners of Immigration vs. Brandt, 26 A 29, that the immigration law of the State of Louisiana is not in conflict with the Constitution of the United States. "We consider the State law in question, not as a regulation of commerce between foreign nations, but a police regulation which the

State may properly make." Commissioners of Immigration vs. Brandt, 26 A. 29.

Permit us, before closing this branch of our subject, to present a review of the facts patent on the record. Behold, at one view, the mere application for the auxiliary writ of injunction made here the basis of a new and original jurisdiction in a Circuit Court of the United States; a restraining order issued restraining the officers of a sovereign State from executing the duties of their office under a law of the State, which had been decided to be a police regulation by the Court of the last resort of the State where the Legislature had enacted the law, thus granting the writ prayed for before trying the issue of injunction or the injunction on its merits. The evidence upon which these things are done was the oath of an alien ship agent that certain sections of the act creating the Bureau of Immigration of the State of Louisiana was in conflict with the Constitution of the United States; which noble instrument the affiant perhaps has never seen, probably has never read, and of its spirit and principles, may, perhaps, understand as much as a mule does about music. These great constitutional questions are approached, even by this, the Supreme Court of the United States, with the utmost care and delicacy. In the case of the Mayor of New York vs. Milne. 8 Pet. 118, and in others having been argued, the Court said: "The practice of this Court is not—except in cases of absolute necessity—to deliver any judgments in cases where constitutional questions are involved, unless four judges concur in the opinion, thus making the decision that of a majority of the whole Court."

At that time, the Court consisted of seven judges, and the Court directed the cases be re-argued at the next term. But not so with the learned judge of the Circuit Court for the District of Louisiana. The case, as the record shows, was submitted on the 27th day of May, 1875, at a time when the docket of our Court was crowded with a large number of important cases, and in three days, including Sunday, to wit: on the 31st day of May, 1875, the injunction was made perpetual. By what course of reasoning such a conclusion was arrived at the Record does not show, as there are no reasons given therein.

ON THE MERITS..

The answer of the defendants to the complainant's bill denies that the act of the State of Louisiana, approved July 13, 1874, is unconstitutional, as set forth in said bill, and avers that said act is a regulation of police made for the benefit of the citizens of the State of Louisiana; that the said act affects persons coming from foreign countries, only after they have come upon the soil of Louisiana voluntarily and have ceased to be in any manner subject to the laws of commerce, and subject to the jurisdiction of said State and the laws thereof. R p.

The cases relied upon by the counsel of complainants were the cases of Smith vs. Turner, Norris vs. The City of ~~New Orleans~~ Boston, 7 How. 279, known as the Passenger Cases, and the case from the United States

Circuit Court of California, in matter of Ah Fong, American ~~Reports~~, vol. 13, page 762. Law Review

In the original reports of the Passenger Cases, the reporter precedes the report of the cases with the remark, that there was no opinion of the Court as a Court, but each reading his own opinion. Mr. Curtis in his edition gives the following syllabus of the case, Curtis, 122, vol. 17:

"A State law which requires the masters of vessels engaged in foreign commerce to pay a certain sum to a State officer on account of any passengers brought from a foreign country into the State, and before landing any alien passengers in the State, is inoperative by reason of its conflict with the laws of the United States."

The statute of the State of New York, discussed in Smith vs. Turner, 7 Howard, 409, was as follows, as appears from the opinion of McLean, J.: "Under the general denomination of health laws in New York, and by the 7th section of an act relating to the Marine Hospital, it is provided that 'the Health Commissioners shall demand and be entitled to receive, and in case of neglect or refusal to pay shall sue for and recover, in his name of office, the following sums from the master of every vessel that shall arrive in the port of New York—

"1st. From the master of every vessel from a foreign port, for himself and each cabin passenger, $1 50; for each steerage passenger, mate, sailor or mariner, $1 00.

"2. From the master of each coasting vessel, for each person on board, $0.25; but no coasting vessel from the States of

New Jersey, Connecticut and Rhode Island shall pay for more than one voyage in each month, computing from the first voyage in each year."

The conclusion of the learned judge was, that the act of the S ate of New York which imposes a tax on passengers of a ship from a foreign port, in the manner provided, "as regulation of commerce," which is exclusively vested in Congress, is therefore void.

Opinion of McLean, 7 H. 393. 392 and 409, Smith vs. Turner.

In Morris vs. City of Boston, 7 H. 411, the Statutes of Massachusetts were as follows:

"An Act relating to Alien Passengers," passed the 20th of April, 1837, by the Legislature of Massachusetts, contains the following provisions:

"1. When any vessel shall arrive at any port or harbor within this State, from any port or place without the same, with alien passengers on board, the officer or officers whom the mayor and aldermen of the city, or the selectmen of the town where it is proposed to land such passengers, are hereby authorized and required to appoint, shall go on board such vessels and examine into the condition of such passengers.

"2. If, on such examination, there shall be found, among said passengers, any lunatic, idiot, maimed. aged, or infirm persons, incompetent in the opinion of the officer so examining, to maintain themselves, or who have been paupers in any other country, no such alien passengers shall be permitted to land until the master, owner, consignee, or agent of such vessel shall have given to such city or town a bond in the sum of $1000, with good and sufficient security, that no such lunatic or indigent passenger shall become a city, town or State charge within ten years from the date of said bond.

"3. No alien passenger, other than those spoken of in the

preceding section, shall be permitted to land until the master, owner, consignee, or agent of such vessel shall pay to the regularly appointed boarding officer the sum of two dollars for each passenger so landing; and the money so collected shall be paid into the treasury of the city or town, to be appropriated, as the city or town may direct, for the support of foreign paupers."

McLean's Opinion, Norris vs. City of Boston, 7 H. 469.

It will be seen that the law of New York meets the vessel on its arrival in port, and the law of Massachusetts when the vessel has arrived in port and before the passengers have landed, and while they still are afloat on navigable waters.

The law of Louisiana, as will be seen below, does not affect the immigrants until after they have landed, and then the law allows them twenty-four hours within which its requisitions are to be complied with.

Section 4 of the act of Louisiana requires that within twenty-four hours after the landing of any passenger or passengers from any ship or vessel at the port of New Orleans from any of the United States other than this State, or from any country out of the United States, the master or commander shall make a report in writing (Acts of Louisiana, 1874, page 271), as set forth in camplainant's bill

Section 5 of said act requires the owners or consignees of the ship or vessel from which such persons are landed to give the people of the State a bond for any person named in the report required by the provisions of the fourth section, that the said persons will

not become a burden on the State, and which bonds may be commuted by the payment of the sum of two dollars for each bond. As this section contains the requirements of the law of Louisiana which are alleged to be in conflict with the Constitution of the United States regulating commerce with foreign nations, we print it in full.

SEC. 5. *Be it further enacted, etc.*, That it shall be the duty of the Commissioners of Immigration, or the chief of the bureau, by an endorsement to be made on said report, to require the owner or consignee of the ship or vessel from which such persons were landed to give a several bond to the people of the State in a penalty of three hundred dollars for any and every person or passenger included in said report, such bond being secured as hereinafter provided and conditioned, to indemnify and save harmless the Commissioners of Immigration, and each and every city, town or parish in this State from any costs which said commissioners or city, town or parish shall incur for the relief or support of the person named in the bond, within five years from the date of such bond, and also to indemnify or refund to the said commissioners any expense or charge they may necessarily incur for the support or medical care of the persons named therein. Each and every bond shall be secured by two or more sufficient securities, being residents of the State of Louisiana, each of whom shall prove by oath or otherwise that he is the owner of a freehold in the State of the value of three hundred dollars over and above all and any claim or lien therein, or against him, including therein any contingent claim which may accrue from or upon any former bond given under the provisions of this act; said bonds having been approved first by theCommissioners of Immigration, who may reject any of said bonds, if in their judgment the security offered is not valid and sufficient. It shall be lawful for any owner or consignee, at any time for twenty-four hours after the landing of such per-

sons or passengers from any ship or vessel, in the port of New Orleans, except as in the section herein provided, to commute for the bond or bonds so required, by paying to the Commissioners of Immigration, or their appointed agents, the sum of two dollars for each and every passenger reported, and every person or passenger for whom they shall fail, neglect or refuse to give bond or pay the commutation money, as in this act set forth, which sum or sums may be sued for and recovered in any court of competent jurisdiction, with judgment in solido against such owners or consignees.

The provisions of the acts of New York and Massachusetts, it will be seen, meet the ship or vessel on arrival in port, and whilst the immigrants are yet on navigable waters; whilst the law of Louisiana does not affect the vessel at all and does not act upon the persons immigrating, until they are within the body of the State and when they have ceased to be passengers, and that they are given twenty-four hours in which to comply with the provisions of the act.

The question presented in this case is, whether the requirement of the bonds by the fifth section of the Act of Louisiana, and affecting the immigrants only after they have landed and come within the jurisdiction of the State and have ceased to be passengers, is in conflict with the Constitution of the United States, as set forth in the complainant's bill. We think this question is settled by the decision in the case of The City of New York vs. Milne. 11 Pet, 132 and 133. In that case, Barbour, J., pronouncing the decision of the Court, said:

"We shall not enter into an examination of the question

whether the power to regulate commerce be or be not exclusive of the State, because the opinion we have formed renders it unnecessary; in other words, we are of opinion that the act is not a regulation of commerce, but of police; and that being thus considered, it was passed in the exercise of a power which rightfully belonged to the States. That the State of New York had power to pass this law before the adoption of the Constitution of the United States, might be probably taken as a truism, without the necessity of proof; but it may tend to present it in a clearer point of view to quote a few passages from a standard writer upon public law, showing the origin and character of this power.

"Vattel, book 2, c. 7, par. 34. 'The sovereign may forbid the entrance of his territory either to foreigners in general, or in particular cases, or to certain persons, or for particular purposes, according as he may think it advisable to the State.'"

"Ibid. c. 8, par. 100. 'Since the lord of the territory may, whenever he thinks proper, forbid its being entered, he has, no doubt, the power to annex what conditions he pleases to the permission to enter.' The power, then, of New York to pass this law having undeniably existed at the formation of the Constitution, the simple inquiry is, whether by that instrument it was taken from the States and granted to Congress; for if it were not, it yet remains with them.

"If, as we think, it be a regulation, not of commerce, but police, then it is not taken from the States. To decide this, let us examine its purpose, the end to be attained, and the means of its attainment.

"The Federalist, in the 45th number, speaking of this subject says: the power reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concerns the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

"And this Court, in the case of Gibbons vs. Ogden, 9 Wheat. 203, which will hereafter be more particularly noticed, in speaking of the inspection laws of the States, say: They form a part of that immense mass of legislation which embraced

everything within the territory of a State not surrendered to the General Government; all which can be more advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, etc., are component parts of this mass.

"Now, if the act in question be tried by reference to the delineation of power laid down in the preceding quotations, it seems to us that we are necessarily brought to the conclusion that it falls within its limits. There is no aspect in which it can be viewed in which it transcends them. If we look at the place of its operation, we find it to be within the territory, and therefore, within the jurisdiction of New York. If we look at the person on which it operates, he is found within the same territory and jurisdiction. If we look at the person for for whose benefit it was passed, they are the people of New York, for whose protection and welfare the Legislature of the State are authorized and in duty bound to provide. X X X

"It has been contended at the bar that there is that collision; and in proof of it, we have been referred to the revenue act of 1798, aud to the act of 1819, relating to passengers. The whole amount of the provision in relation to this subject, in the first of these acts, is to require, in the manifest of a cargo of goods, statement of the names of the passengers, with their baggage, specifying the number and description of packages belonging to each respectively. Now, it is apparent, as well from the language of this provision as from the context, that the purpose was to prevent goods being imported without paying the duties required by law, under the pretext of being the baggage of passengers.

"The act of 1819 contains regulations obviously designed for the comfort of the passengers themselves. For this purpose, it prohibits the bringing more than a certain number proportioned to the tonnage of the vessel, and prescribes the kind and quality of provisons, or sea stores, and their quantity, in a certain proportion to the number of the passengers.

"Another section requires the master to report to the collector a list of all passengers, designating the age, sex, occupation, the country to which they belong, etc., which list is required to be delivered to the Secretary of State, and which he is directed to lay before Congress.

"The object of this clause, in all probability, was to enable the Government of the United States to form an accurate estimate of the increase of population by emigration; but whatsoever may have been its purpose, it is obvious that these laws only affect, through the power over navigation, the passengers whilst on their voyage and until they have landed. After that, and when they have ceased to have any connection with the ship, and when, therefore, they have ceased to be passengers, we are satisfied that acts of Congress applying to them as such, and only professing to legislate in relation to them as such, have then performed their office, and can, with no propriety of language, be said to come into conflict with the law of a State, whose operations only begin when that of the laws of Congress ends; whose operations is not even on the same subject, because although the person on whom it operates is the same, yet, having ceased to be a passenger, he no longer stands in the only relation in which the laws of Congress either professed or intended to act upon him.

"There is, then, no collision between the law in question and the acts of Congress just commented on; and, therefore, if the State law were to be considered as partaking of the nature of a commercial regulation, it would stand the test of the most rigid scrutiny, if tried by the standard laid down in the reasoning of the Court quoted from the case of Gibbons vs. Odgen.

"But we do not place our opinion on this ground. We choose rather to place ourselves on what we consider impregnable positions. They are these: that a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States; that by virtue of this it is not only

the right, but the bounden and solemn duty of a State to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends, where the power over the particular subject, or the manner of its exercise, is not surrendered or restrained in the manner just stated; that all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that consequently, in relation to these, the authority of a State is complete, unqualified and exclusive.

"We are aware that it is at all times difficult to define any subject with proper precision and accuracy. If this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one which we are now considering.

"If we were to attempt it, we should say that every law came within this description which concerned the welfare of the whole people of a State, or any individual within it, whether it related to their rights or their duties; whether it respected them as men, or as citizens of the State; whether in their public or private relations; whether it related to the rights of persons or of property, of the whole people of a State, or of any individual within it; and whose operation was within the territorial limits of the State, and upon the persons and things within its jurisdiction. But we will endeavor to illustrate our meaning rather by exemplification than by definition. No one will deny that a State has a right to punish an individual found within its jurisdiction, who shall have committed an offence within its jurisdiction against its criminal laws."

New York vs. Milne, 11 Peters, 139.

Whatever may have been the divergence of opinion among the several judges in the Passenger Cases, 7 Howard, 426 et seq., it seems admitted the doctrine laid down in New York vs. Milne was not controverted,

that the laws of the United States "affect passengers while on their voyage and until they have landed," and after that can, with no propriety of language, be said to come in conflict with the laws of the State; for in the Passenger Cases, 7 How. 426, Justice Wayne, of the majority, uses the following language:

"But further: by the police power in the States they have reserved the right to be informed of the name and quality of every foreigner that arrives in the State. This, and no more than this, was Milne case, in 11 Pet. 102, but after they had landed, as is said in Milne case. And it was surprising to me, in the argument of these cases, that admission in the Milne case was overlooked by those who spoke in favor of the constitutionality of the laws of Massachusetts and New York; for the right to a list of passengers, notwithstanding the passenger laws of the United States, is put upon the ground that those laws 'affect passengers whilst on their voyage, and until they have landed.' And 'after that and when they shall have ceased to have any connection with the ship, and when, therefore, they shall have ceased to be passengers, the acts of Congress applying to them as such, and only professing to legislate in relation to them as such, have then performed their office, and can with no propriety of language be said to come in conflict with the law of a State whose operation only begins where that of the laws of Congress ends.' That is, that the passenger acts, as my brother Catron has shown in his own opinion, extend to his embarkation abroad until he is landed in the port of the United States for which the vessel sailed."

Wayne, J., Passenger Cases, 7 How. 426.

OF THE POLICE POWER.

In Groves vs. Slaughter, 15 Pet. 511, Baldwin, J. said.

"Cases may indeed arise, where may be found difficulty in discriminating between the regulations of commerce among the several States and the regulations of the internal police of a State; but the subject matter of such regulations, of either description, will lead to the true line which separates them, when they are examined with a disposition to avoid collision between the powers granted to the Federal Government, by the people of the several States, and those which they have reserved exclusively to themselves. 'Commerce among the States,' as defined by this Court, is 'trade,' 'traffic,' intercourse,' and dealing in articles of commerce between States, by its citizens or others, and carried on in more than one State. Police relates only to internal concerns of one State and commerce; within it is purely a matter of internal regulation, when confined to those articles which have become so distributed as to form its items in the common mass of property. It follows that any regulation which affects the commercial intercourse between any two or more States, referring solely thereto, is within the powers granted solely to Congress; and that those regulations which affect only the commerce carried on within one State, or which refer only to subjects of internal police, are within the powers reserved. The opinion of this Court in Milne vs. New York, draws the true line between the two classes of regulations, etc.

Opinion of Baldwin, J., Groves vs. Slaughter, 15 Peters, 511.

Chief Justice Chase, in Osborne vs. Mobile, in speaking of taxing power, said:

"The difficulty of drawing the line between constitutional and unconstitutional taxation by the State was acknowledged, and has always been acknowledged by this Court; but that there is such a line is clear, and the Court can best discharge its duty by determining in each case on which side the tax complained of is. It is as important to leave the rightful powers of the State

in respect to taxation unimpaired as to maintain the powers of the Federal Government in their integrity."

Osborne vs. Mobile, 16 Wall., 481.

And in Groves vs. Slaughter, 15 Peters, 508, McLean, J., who was of the majority in the Passenger Cases, said of the police power:

"Each State has a right to protect itself against the avarice and intrusion of the slave dealer; to guard its citizens against the inconveniences and dangers of a slave population."

"The right to exercise this power by a State is higher and deeper than the Constitution. The evil involves the prosperity, and may endanger the existence of a State. Its power to guard against, or to remedy the evil, rests upon the law of self preservation; a law vital to every community, and especially to a sovereign State."

Opinion of McLean, J., case of Groves vs. Slaughter, 15 Pet. 508.

"The line which divides the power of Congress to regulate commerce with foreign nations from the police power reserved by the States seems to have been clearly discerned by this Honorable Court in the distinction established between the case of the State freight tax, 15 Wal. 232, and the case of the State tax on railroad gross receipts, 15 Wall. 284. In commerce between the several states it is obvious that the power of its regulation by Congress is effected only through the power over transportation, and as regards commerce with foreign nations by the power of Congress over navigation."

The Federalist says, No. 42, page 179: "The second class of powers lodged in General Government consist of those which regulate the intercourse with foreign nations, to wit: to make treaties; send and receive ambassadors, other public ministers, and consuls; to define and punish piracies and felonies committed on the high seas, and offences against the laws of nations; *to regulate foreign commerce, including* a power to pro-

hibit, after the year 1808, the importation of slaves, and lay an intermediate duty of ten dollars per head, as a discouragement to such importations." Federalist, No. 42, page 179.

This language of Mr. Madison, gives much light in the determining the sense of the words, "Congress shall have power to regulate commerce with foreign nations."

It shows a single grant of power enumerated in a class. Commerce is but one of the means of intercourse with foreign nations.

Why should Mr. Madison, in the language used in the Federalist, in speaking of this second class of powers, add to the clause, "To regulate commerce with foreign nations," the ~~additional~~ words, "*including* a power to prohibit the transportation of slaves, etc.," if that latter power was providedfor in the grant of power to Congress to regulate commerce with foreign nations? The decision in Groves vs. Slaughter seems to be based on the right of the State of Mississippi to regulate the importation of immigrants into her territories.

Intercourse with other nations is provided for in other articles of the Constitution. For instance, to make treaties, to send and receive public ministers, etc., as laid down in the language of Mr. Madison, quoted above.

Intercourse presumes life and personality, the communication between nations and the individuals composing them. Commerce is traffic, trade the exchange

of property, merchandise, etc., and its regulation embraces ships, vessels, etc., which are its vehicles. Horne Tooke, in his Diversions of Purley, vol. 2, 33, classes the word COURSE and its cognates, DISCOURSE, CONCOURSE, RECOURSE and INTERCOURSE as abstractions, meaning words whose practical significance is derived from connection with other words.

Commerce is commercial intercourse.

If commerce includes intercourse, then they are one and the same. If intercourse is any thing more than commerce, then it is not the same, and a word not known to the Constitution is interpolated therein, which a court is not at liberty to do.

See note to Opinion of Daniels, J., dissenting, 7 How., 516, 517, 518.

It seems to us that the line between the power of Congress to regulate commerce, and that of the States to regulate their internal police, may be said to be geographical Co-terminous with the admiralty jurisdiction, it stops at the shore. A State law, for its own internal police, operating onlywithin her limits, may be impugned, perhaps, for violating some act of Congress, but not the power to regulate commerce, granted in the Constitution.

It is an obligation expressed or implied in all treaties that the immigrant shall submit and be subject to all the laws and statutes of the country into which he shall come Wayne, J., Passenger Cases, 7, How. 426.

The judgment of the Court *a qua* graciously permits the State of Louisiana to receive, on the execution of

bond, the lunatic, the pauper, the diseased! But where is the law of Congress which makes the distinction between immigrants, or permitting a Circuit Court of the United States to supervise such a power of the State? In both cases, the power depends upon the same principles.

Taney, C. J., dissenting, 7 How. 470.

"Congress has the right to regulate the commerce of the nation, and between the respective States, but not to declare the status which any person shall sustain while in any State of the Union."

"The power can be exercised over persons as passengers only while on the ocean, and until they come under State jurisdiction. It ceases when the voyage is over, then the State laws have control."

Lemon vs. People, 26 Barbour, 270.

Affirmed, 20 N. Y. 562.

Potter's Dwarris on Statutes and Constitutions says, pages 466, 467:

"It is right that this police sanitary power should exist somewhere, though large and discretionary powers are conferred by the Legislature. If the civil authorities were obliged to wait the slow progress of the prosecution, the evil arising from nuisances, and from pestilential diseases, would present an alarming condition of things. The Constitution of the State is to be resorted to, not to see what powers are conferred upon the Legislature, but what have been withheld by the people. The Legislature can provide such agencies for the administration of the law, and the maintenance of public order, and especially in regard to the police, and of security to the life and the health of its citizens, as it shall judge suitable, where no prohibition, expressly made, or necessarily implied, is found in the Constitution."

"All legislative power being vested in the Legislature, except such as is therein prohibited, they possess, under that authority, all power to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the State, and of the citizens thereof."

Ibid. 448.

"As a question of power, it must be regarded in this State to be settled, and founded upon principles which are above and beyond the reach of constitutional restriction."

Ibid 451.

"This power is *the police power*, which is subject to no such condition. 'It is a power much easier to perceive and realize the existence of, and to learn its source, and the principle of its power, than to define its boundaries, or prescribe limits to its exercise. There are many cases where such power is exercised by well ordered governments, and where its fitness is so obvious that every reasonable mind will acknowledge its justice.'"

Ibid. 454.

"The limit to the exercise of the police power can only be this, the regulation must have reference to the comfort, the safety and welfare of society, it must not be in conflict with the Constitution."

Cooley on Constitutional Law, 557, 584.

"This police power which, as has been said is inherent in every government and not restricted by our Constitution, can be brought into exercise for the protection of the citizen, by the sovereign power in all needful emergencies. Every sovereign State posesses within itself, absolute and unlimited legislative power except so far as it is prohibited by fundamental law. There is no arbiter beyond the State itself to determine what legislation is just."

Potter's Dwarris on Statutes, 454, 455.

"The right to pass inspection laws and to levy duties, so far as may be necessary to render them effectual in an express power by the Constitution of the United States. *Ibid.*

Constitution, Article 1, Section 10.

From the foregoing reasoning and authorities, we conclude that, if the police power of the States is a natural right of nations, based on the right of self-preservation, which, as McLean, Justice, declares, in Groves vs. Slaughter, is higher and deeper than the Constitution, it must necessarily be inalienable and exclusively in the States so long as exercised within their territorial limits and for appropriate objects; and we respectfully add, that Congress cannot constitutionally make a regulation of commerce that conflicts with the police powers reserved to the States.

All of which is respectfully submitted.

SAM'L R. & C. L. WALKER,

~~PIKE & JOHNSON,~~

Counsel for Appellants.

Supreme Court of the U.S.

NORTH GERMAN LLOYD,

versus

COMMISSIONERS OF IMMIGRATION.

BRIEF FOR PLAINTIFF.

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Supreme Court of the U.S.

NORTH GERMAN LLOYD,

versus

COMMISSIONERS OF IMMIGRATION.

BRIEF FOR PLAINTIFF.

A Statute of Louisiana, approved June 13, 1874, enacts that the owner or consignee of every vessel arriving at the port of New Orleans from any place without the State, shall give a bond or pay two dollars for every alien passenger or person landed from such vessel, the bond being conditioned that the passenger therein named shall not become a public charge within five years from the date of the bond.

The bill in this case seeks an injunction to restrain the defendant from demanding the bond designated in the above act, on the ground that the exaction of the same is a regulation of commerce which a State has no right to establish, and is, therefore, repugnant to the Constitution of the United States.

By reference to the provisions of the Statute, it will be seen that no discrimination is made between the

alien, who has abundant means of support, and the foreign pauper, who is apt to become a charge upon the State. Nor is there any distinction made between the alien, who lands with the intention of immediately leaving, and the one who means to make the State his permanent home. Both the resident alien, who returns after a temporary absence from the State, and the foreigner, who goes there for a short sojourn, are within the purview of the law. Though the alien may be an able-bodied, industrious and honest immigrant, such as is needed to increase the laboring population of the State, yet for him the head money must be paid, or bond given according to the provisions of the act. The act appears to assume that every foreigner who comes to the State is likely to become a public burden.

In the case of In the Matter of Ah Fong, 13 American Law Register, New Series, p. 761, Mr. Justice Field, in commenting upon a statute of California, containing provisions of a similar character, said: "A statute thus sweeping in its terms, confounding by general designation persons widely variant in character, is not entitled to any very high consideration."

Is the exaction of the bond a regulation of commerce? On this point there cannot be any doubt. It is a charge for the privilege of bringing certain persons into the State. A rule is laid down for the direction of the transportation of passengers, which he must comply with or incur the heavy penalty prescribed by the statute. If such legislation is not a regulation of commerce, it is difficult to imagine what would be.

The case of the State Freight Tax, 15 Wallace, 232, presented the question, whether an act of the Legislature of Pennsylvania, imposing a tax upon freight carried through the State, or taken up in the State, or taken up without the State and brought into it, was a regulation of commerce among the States. The Court said: "Then why is not a tax upon freight transported from State to State a regulation of inter-state transportation, and therefore a regulation of commerce among the States? Is it not prescribing a rule for the transporter, by which he is to be controlled in bringing the subjects of commerce into the State, and in taking them out? The present case is the best possible illustration. The Legislature of Pennsylvania has in effect declared that every ton of freight taken up within the State and carried out, or taken up in other States and brought within her limits, shall pay a specified tax. The payment of that tax is a condition, upon which is made dependent the prosecution of this branch of commerce. As there is no limit to the rate of taxation she may impose, if she can tax at all, it is obvious the condition may be made so onerous, that an interchange of commodities with other States would be rendered impossible. The same power that may impose a tax of two cents per ton upon coal carried out of the State may impose one of five dollars. Such an imposition, whether large or small, is a restraint of the privilege or right to have the subjects of commerce pass freely from one State to the other, without being obstructed by the intervention of State lines."

In one of the cases known as Passenger Cases, 7 How. 283, it was held by this Court, that a law of the State of New York, requiring the master of every vessel arriving in the port of New York from foreign ports, to pay, for himself and each cabin passenger, one dollar and fifty cents, was substantially a tax upon transportation, and was therefore unconstitutional.

In the same case a Statute of Massachusetts, which provided that the master of every vessel arriving in port should pay two dollars for each passenger not bonded according to the provisions of the act, before the passenger could land, was held to be a regulation of commerce. The opinion delivered in those cases by Mr. Justice McLean, said:

"The transportation of passengers is regulated by commerce. More than two passengers for every five tons of the ship or vessel are prohibited under certain penalties; and the master is required to report to the collector a list of the passengers from a foreign port, stating the age, sex and occupation of each, and the place of their destination. In England the same subject is regulated by act of Parliament, and the same thing is done, it is believed, in all commercial countries. If the transportation of passengers be a branch of commerce, of which, there can be no doubt, it follows that the act of New York in imposing this tax, is a regulation of commerce. It is a tax upon a commercial operation—upon what may, in effect, be called an import. In a commercial sense, no just discrimination can be made as regards the law in question, between

the transportation of merchandise and passengers." The opinions of the majority of the Judges were to the same effect.

The same ruling has been made in every case where the Court was called upon to determine whether an act of a State was a regulation of commerce.

Is the law under consideration such a regulation as conflicts with the constitutional authority of Congress?

On this point the decisions in the Passenger Cases above cited are conclusive authority.

We now quote from those cases, p. 400: "Shall passengers admitted by act of Congress without a tax, be taxed by a State? The supposition of such a power in a State is utterly inconsistent with a commercial power, either paramount or exclusive in Congress."

P. 401: "That the transportation of passengers is a part of commerce is not now an open question."

"To encourage foreign emigration was a cherished policy of this country at the time the Constitution was adopted. As a branch of commerce the transportation of passengers has always given a profitable employment to our ships, and within a few years past has required an amount of tonnage nearly equal to that of imported merchandise."

P. 407: "If this power to tax passengers from a foreign country belongs to a State, a tax on the same principle may be imposed on all persons coming into or passing through it from any other State of the Union."

"If this may be done in New York, every other State may do the same on all the lines of our internal navi-

gation, and on all persons who shall pass through its territory on railroad cars, canal boats, stages, or in any other manner. This would enable a State to establish and enforce non-intercourse with every other State."

P. 408: "A tax or duty upon tonnage, merchandise, or passengers, is a regulation of commerce, and cannot be laid by a State."

P. 409: "The act of New York which imposes a tax on passengers of a ship from a foreign port, in the manner provided, is a regulation of foreign commerce, which is vested exclusively in Congress; and the act is therefore void."

P. 413: "That the acts of Massachusetts and New York, so far as they impose any obligation upon the owners or consignees of vessels, or upon the captains of vessels, or freighters of the same, arriving in the ports of the United States within the said States, to pay any tax or duty of any kind whatever, or to be in any way responsible for the same, for passengers arriving in the United States, or coming from a port in the United States, are unconstitutional and void, being contrary to the constitutional grant to Congress of the power to regulate commerce with foreign nations and among the several States."

Our opponents contend, however, that the provision of our law requiring bonds, is a mere police regulation, and that as such, the State has a right to enforce it.

Formerly the rulings of Courts favored the claim here insisted upon by the defendants, but more recently the clause giving to Congress the power to regulate

commerce, has undergone a careful and severe analysis, and the line between police and commercial relations defined. What then are police regulations? They relate solely to matters of health, crimes, good order, etc., and when they pass beyond that they trespass upon the power of Congress. It is difficult to perceive how the giving of these bonds could promote public health or tranquility, or prevent, detect or punish crime; how they could tend to guard or enforce the rights of citizens, or how they could secure the general comfort and prosperity of the State. To require bonds from the passengers themselves would be one thing, and a matter of very doubtful right, but to require them of a party who is under no obligation to or for them, finds its justification in no rule of law whatever, and has nothing to do with police.

It may aid in solving this question if we ascertain the reason why this burden is laid upon the ship, rather than upon the City or any class of persons who might be selected as victims. For what reason are these ships required to insure the State against the possible maintenance of passengers? Not because they are under any obligation to or for them. Not because they are foreign ships; but because they brought the passengers to this port—because they were the medium of their transportation, and for no other assignable reason. But the act of transportation was an act of commerce—an act of commercial intercourse. The fact of transportation embraces the entire voyage. It commences at the time of embarkation in Europe;

accompanies the passengers in their transit across the ocean, and ends only with their landing in the State. During the whole of that period this transportation was beyond the limits of State power and the force of its police authority, and yet it is for this very act of transportation that bonds are required.

The theory of police regulations has been urged in every case in which a State has encroached upon this exclusive power of Congress, but the appellate tribunal has uniformly sustained the power.

When the Legislature of New York granted to certain parties the right to navigate the waters of that State by steam vessels; when the Legislature of Maryland levied a tax upon imported goods, as such; when the Legislature of Louisiana imposed a contribution of five dollars on every vessel coming there for the benefit of the Port Wardens; when the States of New York and Massachusetts taxed ships for bringing passengers, the same assertion of police regulations was made and insisted upon. But this Court, in Gibbons vs. Ogden, 9 Wheaton, 196; in Brown vs. State of Maryland, 12 Wheaton, 446; in Steamship Company vs. Port Wardens, 6 Wallace, 31, and in the cases cited from 7 Howard, decided that the acts were not regulations of police, but were regulations of commerce not within the power or scope of State authority.

In the case of In the Matter of Ah Fong before cited, an act of the State of California enacted that if any lewd or debauched woman should be found among the passengers on board of any vessel arriving in the State

from any place without the State, such passenger should not be permitted to land unless the master of said vessel should give a bond that such woman should not become a public charge within two years from the date of the bond.

It was argued for the State that the law in question was a police regulation, and was, therefore, not contrary to the constitutional grant to Congress of the power to regulate commerce with foreign nations and among the several States. But Field, J., said:

"But the extent of the power of the State to exclude a foreigner from its territory is limited by the right in which it has its origin, the right of self-defence. Whatever out of the legitimate exercise of this right affects the intercourse of foreigners with our people, their immigration to this country, and residence therein is exclusively within the jurisdiction of the General Government, and is not subject to State control or interference. To that government the treaty making power is confided; also, the power to regulate commerce with foreign nations, which includes intercourse with them as well as traffic; also, the power to prescribe the conditions of migration or importation of persons and rules of naturalization; whilst the States are forbidden to enter into any treaty, alliance, or confederation with other nations." P. 767. And again: "A condition which makes the right of the immigrant to land depend upon the execution of a bond by a third party, not under his control, and whom he cannot constrain by any legal proceedings, and whose execution of the

bond can only be obtained on such terms as he may exact, is as onerous as any charge which can well be imposed, and must, if valid, generally lead, as in the present case, to the exclusion of the immigrant." P. 773.

The charge laid by the act of Louisiana in question is equally oppressive, and will, if held valid, lead to the imposition of other and more onerous conditions for allowing the subjects of commerce to be brought into the State.

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